

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RONALD P. PASSATEMPO, TRUSTEE,)
On behalf of the Samuel Pietropaolo Irrevocable)
Trust, SAMUEL PIETROPAOLO, GRANTOR)
to the Samuel Pietropaolo Irrevocable Trust,)
and PATRICIA D. PIETROPAOLO,)
BENEFICIARY of the Samuel Pietropaolo)
Irrevocable Trust,)
Plaintiffs,)
v.) Civil Action No. 05-10118-GAO
FREDERICK V. MCMENIMEN III, BARRY)
G. ARMSTRONG, NEW ENGLAND)
ADVISORY GROUP, LLC, 1717 CAPITAL)
MANAGEMENT COMPANY, 1717 CMC)
PROVIDENT (f/k/a Provident Mutual Life)
Insurance Company), and 1717 CMC)
FINANCIAL SERVICES, INC.,)
Defendants.)

)

ANSWER OF DEFENDANT 1717 CAPITAL MANAGEMENT COMPANY

Defendant 1717 Capital Management Company (hereinafter “1717 CMC”)
answers the First Amended Complaint and Jury Demand of Plaintiffs Ronald P.
Passatempo, Samuel Pietropaolo, and Patricia Pietropaolo (hereinafter “Plaintiffs”) as
follows:

Parties

1. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 1 of Plaintiffs’ Complaint.
2. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 2 of Plaintiffs’ Complaint.

3. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 3 of Plaintiffs' Complaint.

4. The allegations contained in Paragraph 4 of Plaintiffs' Complaint are ambiguous and conclusory. To the extent an answer is required, 1717 CMC denies the allegations contained in Paragraph 4.

5. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 5 of Plaintiffs' Complaint.

6. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 6 of Plaintiffs' Complaint.

7. 1717 CMC admits the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

8. Nationwide Life Insurance Company of America (hereinafter "Nationwide") is the proper name of Nationwide Provident. Nationwide is a wholly-owned subsidiary of Nationwide Financial Services, Inc. (hereinafter "NFS"). NFS has an address of 1 Nationwide Plaza, Columbus, Ohio 43215. 1717 CMC denies the remaining allegations contained in the first sentence of Paragraph 8 of Plaintiffs' Complaint. The allegations contained in the second sentence of Paragraph 8 are ambiguous and conclusory; to the extent an answer is required, 1717 CMC denies the second sentence of Paragraph 8. 1717 CMC denies the last sentence of Paragraph 8.

9. 1717 CMC admits the allegations contained in Paragraph 9 of Plaintiffs' Complaint.

Facts

10. 1717 CMC restates its answers to the above-numbered Paragraphs.

11. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 11 of Plaintiffs' Complaint.

12. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 12 of Plaintiffs' Complaint.

13. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 13 of Plaintiffs' Complaint.

14. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 14 of Plaintiffs' Complaint.

15. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 15 of Plaintiffs' Complaint.

16. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 16 of Plaintiffs' Complaint.

17. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 17 of Plaintiffs' Complaint.

18. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 18 of Plaintiffs' Complaint.

19. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 19 of Plaintiffs' Complaint.

20. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 20 of Plaintiffs' Complaint.

21. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 21 of Plaintiffs' Complaint.

22. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 22 of Plaintiffs' Complaint.

23. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 23 of Plaintiffs' Complaint.

24. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 24 of Plaintiffs' Complaint.

25. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 25 of Plaintiffs' Complaint.

26. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 26 of Plaintiffs' Complaint.

27. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 27 of Plaintiffs' Complaint.

28. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 28 of Plaintiffs' Complaint.

29. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 29 of Plaintiffs' Complaint.

30. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 30 of Plaintiffs' Complaint.

31. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 31 of Plaintiffs' Complaint.

32. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 32 of Plaintiffs' Complaint.

33. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 33 of Plaintiffs' Complaint.

34. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 34 of Plaintiffs' Complaint.

35. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 35 of Plaintiffs' Complaint.

36. 1717 CMC admits the first sentence of Paragraph 36 of Plaintiffs' Complaint. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 36.

37. 1717 CMC admits the first sentence of Paragraph 37 of Plaintiffs' Complaint. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 37.

38. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 38 of Plaintiffs' Complaint.

39. 1717 CMC admits that it subsequently approved an application for life insurance on the life of Plaintiff Samuel Pietropaolo.

40. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 40 of Plaintiffs' Complaint.

41. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 41 of Plaintiffs' Complaint.

42. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 42 of Plaintiffs' Complaint.

43. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 43 of Plaintiffs' Complaint.

44. 1717 CMC admits the first sentence of Paragraph 44 of Plaintiffs' Complaint. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of the remainder of Paragraph 44.

45. 1717 CMC is without knowledge or information sufficient to form a belief as to Plaintiffs' assertion that Defendant Frederick V. McMenimen III (hereinafter "Defendant McMenimen") sold the policy at issue here to Plaintiffs "in coordination with Mr. Armstrong and NEAG." 1717 CMC denies the first sentence of Paragraph 45 of Plaintiffs' Complaint insofar as it asserts that Defendant McMenimen sold the Policy to Plaintiffs "through" NFS. 1717 CMC admits the second and third sentences of Paragraph 45. 1717 CMC denies the last sentence of Paragraph 45.

46. 1717 CMC denies the first sentence of Paragraph 46 of Plaintiffs' Complaint. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of the second sentence of Paragraph 46. 1717 CMC admits that Nationwide has received approximately \$100,000 in premium payments on the policy at issue here.

47. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 47 of Plaintiffs' Complaint.

48. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 48 of Plaintiffs' Complaint.

49. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 49 of Plaintiffs' Complaint.

50. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 50 of Plaintiffs' Complaint.

51. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 51 of Plaintiffs' Complaint.

52. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 52 of Plaintiffs' Complaint.

53. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 53 of Plaintiffs' Complaint.

54. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 54 of Plaintiffs' Complaint.

55. 1717 CMC denies the allegations contained in Paragraph 55 of Plaintiffs' Complaint.

56. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 56 of Plaintiffs' Complaint.

57. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 57 of Plaintiffs' Complaint.

58. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 58 of Plaintiffs' Complaint.

59. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 59 of Plaintiffs' Complaint.

60. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 60 of Plaintiffs' Complaint.

61. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 61 of Plaintiffs' Complaint.

62. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 62 of Plaintiffs' Complaint.

63. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 63 of Plaintiffs' Complaint.

64. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 64 of Plaintiffs' Complaint.

65. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 65 of Plaintiffs' Complaint.

66. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 66 of Plaintiffs' Complaint.

67. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 67 of Plaintiffs' Complaint.

68. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 68 of Plaintiffs' Complaint.

69. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 69 of Plaintiffs' Complaint.

70. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 70 of Plaintiffs' Complaint.

71. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 71 of Plaintiffs' Complaint.

72. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 72 of Plaintiffs' Complaint.

73. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 73 of Plaintiffs' Complaint.

74. 1717 CMC admits that Defendant McMenimen received commissions in connection with the policy at issue here while under contract with Nationwide. 1717 CMC denies the remainder of the allegations contained in Paragraph 74 of Plaintiffs' Complaint.

75. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 75 of Plaintiffs' Complaint.

76. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 76 of Plaintiffs' Complaint.

77. 1717 CMC denies that Nationwide was ever requested to attend a meeting among Defendant McMenimen, Plaintiff Samuel Pietropaolo's son Samuel Pietropaolo, and representatives of Nationwide. 1717 CMC admits the remainder of Paragraph 77 of Plaintiffs' Complaint.

78. 1717 CMC admits that Nationwide received a copy of the letter identified in Paragraph 78 and Exhibit I of Plaintiffs' Complaint.

79. 1717 CMC denies the allegations contained in Paragraph 79 of Plaintiffs' Complaint.

Count I

80. 1717 CMC restates its answers to the above-numbered Paragraphs.

81. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 81 of Plaintiffs' Complaint.

82. 1717 CMC denies the allegations contained in Paragraph 82 of Plaintiffs' Complaint.

83. 1717 CMC denies the allegations contained in Paragraph 83 of Plaintiffs' Complaint.

84. 1717 CMC denies the allegations contained in Paragraph 84 of Plaintiffs' Complaint.

85. 1717 CMC denies the allegations contained in Paragraph 85 of Plaintiffs' Complaint.

86. 1717 CMC denies the allegations contained in Paragraph 86 of Plaintiffs' Complaint.

Count II

87. 1717 CMC restates its answers to the above-numbered Paragraphs.

88. 1717 CMC denies the allegations contained in Paragraph 88 of Plaintiffs' Complaint.

89. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 89 of Plaintiffs' Complaint.

90. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 90 of Plaintiffs' Complaint.

91. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 91 of Plaintiffs' Complaint.

92. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 92 of Plaintiffs' Complaint.

93. 1717 CMC denies the allegations contained in Paragraph 93 of Plaintiffs' Complaint.

94. 1717 CMC denies the allegations contained in Paragraph 94 of Plaintiffs' Complaint.

95. 1717 CMC denies the allegations contained in Paragraph 95 of Plaintiffs' Complaint.

96. 1717 CMC denies the allegations contained in Paragraph 96 of Plaintiffs' Complaint.

Count III

97. 1717 CMC restates its answers to the above-numbered Paragraphs.

98. 1717 CMC denies the allegations contained in Paragraph 98 of Plaintiffs' Complaint.

99. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 99 of Plaintiffs' Complaint.

100. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 100 of Plaintiffs' Complaint.

101. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 101 of Plaintiffs' Complaint.

102. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 102 of Plaintiffs' Complaint.

103. 1717 CMC denies the allegations contained in Paragraph 103 of Plaintiffs' Complaint.

104. 1717 CMC denies the allegations contained in Paragraph 104 of Plaintiffs' Complaint.

Count IV

105. 1717 CMC restates its answers to the above-numbered Paragraphs.

106. 1717 CMC denies the allegations contained in Paragraph 106 of Plaintiffs' Complaint.

107. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 107 of Plaintiffs' Complaint.

108. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 108 of Plaintiffs' Complaint.

109. 1717 CMC is without knowledge or information sufficient to form a belief as to the truth of Paragraph 109 of Plaintiffs' Complaint.

110. 1717 CMC denies the allegations contained in Paragraph 110 of Plaintiffs' Complaint.

111. 1717 CMC denies the allegations contained in Paragraph 111 of Plaintiffs' Complaint.

112. 1717 CMC denies the allegations contained in Paragraph 112 of Plaintiffs' Complaint.

113. 1717 CMC denies the allegations contained in Paragraph 113 of Plaintiffs' Complaint.

Count V

114. 1717 CMC restates its answers to the above-numbered Paragraphs.
115. 1717 CMC denies the allegations contained in Paragraph 115 of Plaintiffs' Complaint.
116. 1717 CMC denies the allegations contained in Paragraph 116 of Plaintiffs' Complaint.
117. 1717 CMC denies the allegations contained in Paragraph 117 of Plaintiffs' Complaint.
118. 1717 CMC denies the allegations contained in Paragraph 118 of Plaintiffs' Complaint.

Count VI

119. 1717 CMC restates its answers to the above-numbered Paragraphs.
120. 1717 CMC denies the allegations contained in Paragraph 120 of Plaintiffs' Complaint.
121. 1717 CMC denies the allegations contained in Paragraph 121 of Plaintiffs' Complaint.
122. 1717 CMC denies the allegations contained in Paragraph 122 of Plaintiffs' Complaint.
123. 1717 CMC denies the allegations contained in Paragraph 123 of Plaintiffs' Complaint.

Count VII

124. 1717 CMC restates its answers to the above-numbered Paragraphs.

125. 1717 CMC denies the allegations contained in Paragraph 125 of Plaintiffs' Complaint.

126. 1717 CMC denies the allegations contained in Paragraph 126 of Plaintiffs' Complaint.

127. 1717 CMC denies the allegations contained in Paragraph 127 of Plaintiffs' Complaint.

128. 1717 CMC denies the allegations contained in Paragraph 128 of Plaintiffs' Complaint.

Count VIII

129. 1717 CMC restates its answers to the above-numbered Paragraphs.

130. 1717 CMC denies the allegations contained in Paragraph 130 of Plaintiffs' Complaint.

131. 1717 CMC denies the allegations contained in Paragraph 131 of Plaintiffs' Complaint.

Count IX

132. 1717 CMC restates its answers to the above-numbered Paragraphs.

133. 1717 CMC denies the allegations contained in Paragraph 133 of Plaintiffs' Complaint.

134. 1717 CMC denies the allegations contained in Paragraph 134 of Plaintiffs' Complaint.

135. 1717 CMC denies the allegations contained in Paragraph 135 of Plaintiffs' Complaint.

136. 1717 CMC denies the allegations contained in Paragraph 136 of Plaintiffs' Complaint.

Count X

137. 1717 CMC restates its answers to the above-numbered Paragraphs.

138. 1717 CMC denies the allegations contained in Paragraph 138 of Plaintiffs' Complaint.

139. 1717 CMC denies the allegations contained in Paragraph 139 of Plaintiffs' Complaint.

140. 1717 CMC denies the allegations contained in Paragraph 140 of Plaintiffs' Complaint.

141. 1717 CMC denies the allegations contained in Paragraph 141 of Plaintiffs' Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted

SECOND AFFIRMATIVE DEFENSE

Plaintiffs are barred from seeking the relief requested by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are barred from seeking the relief requested by laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs are estopped from seeking the relief requested.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have waived their right to seek the relief requested.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from seeking the relief requested by their contributory and/or comparative negligence.

SEVENTH AFFIRMATIVE DEFENSE

1717 CMC hereby puts Plaintiffs on notice that it intends to rely on such further defenses as are developed during the course of this litigation. 1717 CMC expressly reserves the right to amend its Answer accordingly.

Respectfully submitted,

1717 CAPITAL MANAGEMENT
COMPANY

By its attorneys,

/s/ Timothy J. Casey

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Dated: January 28, 2005